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Counsel for Plaintiffs/Judgment Creditors

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST, TRUSTEES
OF THE OPERATING ENGINEERS HEALTH
AND WELFARE FUND, TRUSTEES OF THE
OPERATING ENGINEERS VACATION-
HOLIDAY SAVINGS TRUST, and TRUSTEES
OF THE OPERATING ENGINEERS
TRAINING TRUST,

Plaintiffs,

v.

DONALD MARTINEZ, an individual, doing
business as "ALPHA 1 CONSTRUCTION,"

Defendant.

CASE NO.: 2:14-CV-01780-RFB-CWH

**APPLICATION FOR JUDGMENT DEBTOR
EXAMINATION OF DONALD MARTINEZ**

Plaintiffs/Judgment Creditors, Trustees of the Operating Engineers Pension Trust, Trustees of the Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers Vacation-Holiday Savings Trust and Trustees of the Operating Engineers Training Trust, hereby request an Order directing the appearance of Defendant/Judgment Debtor Donald Martinez, an individual, doing business as "Alpha 1 Construction" (hereinafter "Mr. Martinez"), and an Order directing the production of certain documents subject to the ownership and control of Mr. Martinez.

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1 This application is supported by the attached Memorandum of Points and Authorities;
2 Declaration of Nathan R. Ring, attached hereto as **Exhibit A**; and the proposed Order, attached hereto as
3 **Exhibit B**.

4 May 11, 2015

Respectfully submitted,

LAQUER, URBAN, CLIFFORD & HODGE LLP

7 /s/ Nathan R. Ring

8 Michael A. Urban, Esq., Nevada State Bar No. 3875

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MEMORANDUM OF POINTS AND AUTHORITIES

Rule 69 of the Federal Rules of Civil Procedure provides that “[i]n aid of the judgment or execution, the judgment creditor ... may obtain discovery from any person—including the judgment debtor.” Fed. R. Civ. P. 69(a)(2). As this Court has noted, Rule 69 “permits discovery from the judgment debtor and/or third persons.” *Montgomery v. Etreppid Technologies, LLC*, 2009 WL 465941, *1 (D. Nev. Feb. 25, 2009) (citing *Danning v. Lavine*, 572 F.2d 1386, 1389-90 (9th Cir. 1978)); *Is Technology, LLC v. Rational Enterprises LTDA*, 2007 WL 5596692, *4 (D. Nev. 2007)).

A. Judgment Creditors Are Entitled to a Judgment Debtor Examination.

Pursuant to Rule 62 of the Federal Rules of Civil Procedure, proceedings to enforce a money judgment may be initiated once 14 days have passed since the entry of judgment, unless the judgment debtor has obtained a stay by posting a supersedeas bond. Fed R. Civ. P. 62(d). More than 14 days have passed since judgment was entered, no supersedeas bond is on file, and no one has sought a stay of execution. Ring Decl. ¶ 2. Accordingly, the Judgment Creditors may proceed.

Rule 69(a)(2) provides that a judgment creditor “may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2); *see also El Salto S.A. v. PSG Co.*, 444 F.2d 477, 484 n.3 (9th Cir.), *cert. denied*, 404 U.S. 940 (1971) (“a judgment creditor proceeding under Rule 69(a) may utilize either State practice or the federal rules for taking depositions”).

Under Nevada procedure, the Judgment Creditors are entitled to a debtor examination. Nev. Rev. Stat. § 21.270 states that a judgment creditor, at any time after the judgment is entered, is “entitled to an order from the judge of the court requiring the judgment debtor to appear and answer upon oath or affirmation concerning his or her property” at an examination either before (1) the judge or master appointed by the judge or (2) an attorney representing the judgment creditor. Nev. Rev. Stat. § 21.270(1). The statute further states that no judgment debtor may be required to appear outside the county in which the judgment debtor resides. *Id.* This requirement is met since the Judgment Debtor’s address is in Clark County, which is the same county wherein this Court is located. Ring Decl. ¶ 3.

D. The Debtor Examination Should Proceed Before a Magistrate.

A Judgment Debtor Examination is necessary to enable Judgment Creditors to discover any and all real and personal property, vehicles, assets, accounts, etc., of Judgment Debtor and facts relating thereto, which may assist in potential executions to satisfy the Judgment. Nev. Rev. Stat. § 21.270 entitles Judgment Creditors to an examination before either the Court or an attorney. Local Rule IB 1-9(k) “authorizes this court to conduct judgment debtor examinations and to preside over proceedings to enforce civil judgments.” *Montgomery* at *1. Additionally, Local Rule IB 1-9(n) gives a magistrate judge the authorization to preside over proceedings to enforce civil judgments.

Because Nev. Rev. Stat. § 21.270 allows two options in proceeding for a judgment debtor examination, Judgment Creditors will take this opportunity to explain its proposed order attached hereto. If the Judgment Debtor is required to appear before any person other than a judge or master, the proceedings must be transcribed by a court reporter or recorded electronically. Nev. Rev. Stat. § 21.270(2). For this reason, Judgment Creditors desired to allow the Court the option to require the appearance of the Judgment Debtor to be sworn in before the Court, thus obviating the need and expense to transcribe or record the testimony. Additionally, it is counsel’s collective experience that each Magistrate Judge in this Court handles the administration of judgment debtor examinations differently, some Magistrates will allow debtors to be sworn in court and allow the parties to retire to another location to actually take the examination, and other Magistrates who will not swear in debtors before the Court. Ring Decl. ¶ 5. For this reason alone, the proposed order contains two blanks for the Judgment Debtor’s appearance to allow the Court to exercise its discretion in deciding how best to conduct the debtor examination. The first blank would be to require the appearance in Court to be sworn, and the second blank would be to require appearance at Judgment Creditors’ counsel’s law office to submit for examination.

Accordingly, Judgment Creditors respectfully request that the swearing in for the examination take place before a Magistrate Judge, with the parties allowed to retire to Judgment Creditors’ counsel’s law office to conduct the examination.

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C. Judgment Debtor Should Be Ordered to Produce Documents Necessary to Identify and Verify Assets and Liabilities.

Judgment Creditors additionally request an order requiring production of relevant documents to enable them to pursue execution of the judgment. “The scope of post-judgment discovery is broad, ‘the judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor.’” *British Intern. Ins. Co., Ltd. v. Seguros La Republica, S.A.* 200 F.R.D. 586, 589 (W.D. Tex. 2000) (quoting *Caisson Corp. v. County West Building Corp.*, 62 F.R.D. 331, 334 (E.D. Pa. 1974)). Accordingly, an order for the production of documents in aid of execution is appropriate.

D. Conclusion

For the reasons stated above, pursuant to Rule 69 of the Federal Rules of Civil Procedure, Nev. Rev. Stat. § 21.270, and Local Rules IB 1-9(k), (n), Judgment Creditors respectfully request that this Court issue its Order for Judgment Debtor Examination to take place before a magistrate judge of this Court to be sworn in, and thereafter allow the parties to retire to another location to actually take the examination, as well as an order requiring the Judgment Debtor to produce the documents listed in the proposed order.

May 11, 2015

Respectfully submitted,

LAQUER, URBAN, CLIFFORD & HODGE LLP

/s/ Nathan R. Ring

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Plaintiffs,

v.

DONALD MARTINEZ, an individual, doing
business as "ALPHA 1 CONSTRUCTION,"

Defendant.

CASE NO.: 2:14-CV-01780-RFB-CWH

**DECLARATION OF NATHAN R. RING IN
SUPPORT OF APPLICATION FOR
JUDGMENT DEBTOR EXAMINATION OF
DONALD MARTINEZ**

I, Nathan R. Ring, declare and state as follows:

1. I am a member of the Bar of this Court and attorney of record for the Judgment Creditors in the above-captioned action.

2. Judgment was originally entered in the United States District Court, Central District of California, Case Number CV14-02348 on July 17, 2014, in the amount of Sixty-Three Thousand Four Hundred Thirty-Three Dollars and Thirteen Cents (\$63,433.13) plus post-judgment interest, in favor of Plaintiffs and against Defendant, Donald Martinez, an individual doing business as "Alpha 1 Construction" ("Judgment"). On August 6, 2014, the Judgment was registered with this Court and

1 entered in United States District Court, District of Nevada. The Judgment has not been vacated, set
2 aside or reversed and the amount of Sixty-Three Thousand Four Hundred Thirty-Three Dollars and
3 Thirteen Cents (\$63,433.13), exclusive of post-judgment interest and costs, remains owing and unpaid.
4 There is no stay of execution and execution may properly be issued.

5 3. On February 3, 2015, a Notice of Filing Application of Foreign Judgment and Affidavit
6 of Judgment Creditor was served upon Donald Martinez. *See* Affidavit of Service Notice of Filing
7 Application of Foreign Judgment and Affidavit of Judgment Creditor (Dkt. 10).

8 4. Mr. Donald Martinez is believed to reside at 5006 Bond Street in Las Vegas, Nevada.

9 5. An Order scheduling an examination of Mr. Martinez, as an individual doing business
10 as “Alpha 1 Construction” and requiring production of documents by Mr. Martinez is necessary to
11 pursue collection of the judgment. No prior examination has been conducted.

12 6. I estimate the time for the examination in this matter will be approximately three hours.
13 The subject of this examination will be the location and identification of all assets of Donald Martinez
14 and all debts and obligations owed to Donald Martinez. In addition to the appearance of Mr. Martinez,
15 the current financial statements and records and recent past financial statements and records of
16 Mr. Martinez and Alpha 1 Construction are necessary for a complete examination to be conducted.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct, and that this declaration was executed on May 8, 2015, in Las Vegas,
19 Nevada.

20
21 /s/ Nathan R. Ring

22 NATHAN R. RING
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CASE NO.: 2:14-CV-01780-RFB-CWH

[PROPOSED]

**ORDER FOR JUDGMENT DEBTOR
EXAMINATION OF DONALD MARTINEZ**

Having considered Plaintiffs' Application for Judgment Debtor Examination of Donald Martinez, an individual doing business as "Alpha 1 Construction", and the Declaration of Nathan R. Ring, and good cause appearing,

IT IS HEREBY ORDERED that Defendant/Judgment Debtor Donald Martinez appear in Courtroom 3C at the United States Courthouse for the District of Nevada, located at 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101, on the 25 day of August, 2015 at 9:30 a.m...... to be sworn in for a Judgment Debtor Examination,

1 **IT IS FURTHER ORDERED** that Donald Martinez, appear at the offices of Laquer, Urban,
2 Clifford & Hodge, LLP located at 4270 S. Decatur Blvd., Suite A-9, Las Vegas, Nevada, on the
3 __ 25 __ day of August, 2015, at 10:30 a.m., and answer concerning property subject to the
4 ownership and control of Donald Martinez, an individual doing business as “Alpha 1 Construction.”

5 **IT IS FURTHER ORDERED** that Donald Martinez shall produce at the offices of Laquer,
6 Urban, Clifford & Hodge, LLP located at 4270 S. Decatur Blvd., Suite A-9, Las Vegas, Nevada, all of
7 the following documents and things under his control, the Company’s control, or under control of his
8 agents for inspection and copying no less than **two (2) weeks prior** to the Judgment Debtor
9 Examination:

10 1. All financial statements, including supporting schedules, compiled, reviewed, or audited
11 for, on behalf of, or in connection with Donald Martinez, individually and/or doing business as Alpha
12 1 Construction, from January 1, 2013, to the present.

13 2. All original monthly bank statements of Donald Martinez, individually and/or doing
14 business as Alpha 1 Construction, from January 1, 2013, to the present.

15 3. All original monthly bank statements of the spouse of Donald Martinez, if any, from
16 January 1, 2013, to the present.

17 4. All original savings accounts pass books, certificates of deposit, and trust certificates in
18 the name of Donald Martinez, individually and/or doing business as Alpha 1 Construction, from
19 January 1, 2013, to the present.

20 5. All original savings accounts pass books, certificates of deposit, and trust certificates in
21 the name of the spouse of Donald Martinez, if any, from January 1, 2013, to the present.

22 6. All original negotiable instruments and negotiable securities in the name of Donald
23 Martinez, individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to the
24 present.

25 7. All evidence or other memoranda of any ownership interest of Donald Martinez,
26 individually and/or doing business as Alpha 1 Construction, in any other corporation, partnership,
27 unincorporated association or any business organized or conducted for the production of income from
28 January 1, 2013, to the present.

1 8. All evidence or other memoranda of any income received by Donald Martinez,
2 individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to the present, to
3 include but not limited to tax returns, insurance proceeds, or repayment of loans.

4 9. All evidence or other memoranda of any income received by the spouse of Martinez, if
5 any, from January 1, 2013, to the present, to include but not limited to tax returns, insurance proceeds,
6 or repayment of loans.

7 10. All evidence or other memoranda of any employer, or place of work or employment of
8 Donald Martinez, individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to
9 the present, including but not limited to contracts, invoices, billings, vouchers or payments.

10 11. All evidence of any ownership interest of Donald Martinez, individually and/or doing
11 business as Alpha 1 Construction, to include but not limited to, bills of sale, pink slips or any other
12 record or title, in any motor vehicle, airplane, boat, equipment or machinery, from January 1, 2013, to
13 the present.

14 12. All evidence of any debts or payments owed to Donald Martinez, individually and/or
15 doing business as Alpha 1 Construction, to include, but not limited to, those arising from loans or
16 judgments.

17 13. All evidence of any debts or repayments owed by Donald Martinez, individually and/or
18 doing business as Alpha 1 Construction, to include, but not limited to, those arising from loans or
19 judgments from January 1, 2013, to the present.

20 14. Any and all evidence or other memoranda indicating that Donald Martinez, individually
21 and/or doing business as Alpha 1 Construction, was either a plaintiff or a defendant in any lawsuit
22 from January 1, 2013, to the present.

23 15. Any and all evidence or memoranda indicating that Donald Martinez, individually
24 and/or doing business as Alpha 1 Construction, received any judgment, award, bequest or devise in any
25 lawsuit or other court action from January 1, 2013, to the present.

26 16. Any and all evidence or memoranda indicating any ownership interest of Donald
27 Martinez, individually and/or doing business as Alpha 1 Construction, in any patent, invention, trade
28 name, or copyright.

1 17. Any and all evidence or memoranda indicating an ownership interest of Donald
2 Martinez, individually and/or doing business as Alpha 1 Construction, in any real property or
3 developments on real property.

4 18. Any and all evidence of the sale(s) of any real or personal property of Donald Martinez,
5 individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to the present.

6 19. Any and all loan applications filled out by Donald Martinez, individually and/or doing
7 business as Alpha 1 Construction, since January 1, 2013.

8 20. Copies of all documents evidencing the sale or transfer of any assets of Donald
9 Martinez, individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to the
10 present.

11 21. Any and all documents evidencing any Federal or State tax liability of Donald Martinez,
12 individually and/or doing business as Alpha 1 Construction, from January 1, 2013 to the present.

13 22. Original cash disbursement journals and check registers maintained in connection with
14 Donald Martinez, individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to
15 the present.

16 23. All Federal income tax returns, including all supporting schedules prepared or filed for,
17 or on behalf of, Donald Martinez, individually and/or doing business as Alpha 1 Construction, for the
18 years 2012 to the present.

19 24. All daily job logs, diaries or foreman reports of Donald Martinez, individually and/or
20 doing business as Alpha 1 Construction, from January 1, 2013, to the present.

21 25. All daily job tickets or invoices of Donald Martinez, individually and/or doing business
22 as Alpha 1 Construction, from January 1, 2013, to the present.

23 26. All subcontracts entered into by Donald Martinez, individually and/or doing business as
24 Alpha 1 Construction, to perform construction projects for the time period of January 1, 2013, to the
25 present.

26 27. All accounts receivable reports for Donald Martinez, individually and/or doing business
27 as Alpha 1 Construction, for the period of January 1, 2013, to the present.

1 28. All canceled checks drawn on any account established in the name of Donald Martinez,
2 individually and/or doing business as Alpha 1 Construction, from January 1, 2013, to the present.

3 29. All evidence of any license to include, but not limited to, any business or professional
4 license, issued by any city, county, state or any federal government agency or department in the name
5 of Donald Martinez, individually and/or doing business as Alpha 1 Construction.

6 30. Copies of all certified payroll records submitted by Donald Martinez, individually
7 and/or doing business as Alpha 1 Construction, to any general contractor or public contracting agency
8 for public works projects for work performed during the time period from January 1, 2013, to the
9 present.

10 31. Copies of all certified payroll records submitted by Donald Martinez, individually
11 and/or doing business as Alpha 1 Construction, to any general contractor or public contracting agency
12 for public works projects for work performed during the time period from January 1, 2013, to the
13 present.

14 32. Evidence of all payments made by Donald Martinez, individually and/or doing business
15 as Alpha 1 Construction, to his creditors from the date of service of this Order through the date of the
16 hearing.

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NOTICE TO JUDGMENT DEBTOR

IF YOU FAIL TO APPEAR AT THE TIME AND PLACE SPECIFIED IN THIS ORDER, YOU MAY BE SUBJECT TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT AND THE COURT MAY MAKE AN ORDER REQUIRING YOU TO PAY REASONABLE ATTORNEY'S FEES INCURRED BY THE JUDGMENT CREDITORS IN THIS PROCEEDING.

DATED: July 13, 2015


UNITED STATES MAGISTRATE JUDGE

Respectfully submitted,

LAQUER, URBAN, CLIFFORD & HODGE LLP

/s/ Nathan R. Ring

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